

No. 12333

United States
Court of Appeals
For the Ninth Circuit.

ARCADIO CABEBE,

Appellant,

vs.

DEAN ACHESON, Secretary of State of the
United States of America,

Appellee.

Transcript of Record

Appeal from the United States District Court for the
Territory of Hawaii.

OCT 28 1949

PAUL P. O'BRIEN, 
Clerk

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS
OF RECORD

For the Plaintiff,

ARCADIO CABEBE,
W. Y. CHAR,

219 Bishop National Bank Branch
Building,
Honolulu, T. H.

Y. FUKUSHIMA,

Bishop National Bank Branch Building,
Honolulu, T. H.

SAU UNG CHAN,

88 North King St.,
Honolulu, T. H.

For the Defendant,

DEAN ACHESON,

RAY J. O'BRIEN,

United States Attorney,
District of Hawaii.

HOWARD K. HODDICK,

Assistant United States Attorney,
District of Hawaii.

In the United States District Court for the
District of Hawaii

Civil No. 908.

ARCADIO CABEBE,

Plaintiff,

vs.

DEAN ACHESON, Secretary of State of the
United States of America,

Defendant.

CLERK'S STATEMENT

Time of Commencing Suit:

April 9, 1949, Complaint filed.

Names of Original Parties:

Arcadio Cabebe, Plaintiff.

Dean Acheson, Secretary of State of the United
States of America, Defendant.

Dates of Filing Pleadings:

June 1, 1949, Answer.

June 23, 1949, Memorandum Decision.

June 23, 1949, Judgment.

Times When Proceedings Were Had:

June 22, 1949, Hearing.

Proceedings in the above-entitled matter were had
before the Honorable J. Frank McLaughlin, Judge,
United States District Court, District of Hawaii.

July 26, 1949, Motion for Extension of Time for
Appeal and Affidavit of W. Y. Char, Order.

July 28, 1949, Notice of Appeal. [2*]

* Page numbering appearing at bottom of page of original certified
Transcript of Record.

August 5, 1949, Bond on Appeal, Designation of Record on Appeal.

August 8, 1949, Designation of Record, Statement of Points.

CERTIFICATE OF CLERK
TO THE ABOVE STATEMENT

United States of America,
Territory of Hawaii.—ss.

I, Wm. F. Thompson, Jr., Clerk of the United States District Court for the District of Hawaii, do hereby certify the foregoing to be a full, true and correct statement showing the time of commencement of the above entitled cause, the names of the original parties, the dates when the respective pleadings were filed, the times when proceedings were had, the name of the judge presiding, and the dates when appeal pleadings were filed in the above-entitled cause.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court this 15th day of August, A.D. 1949.

[Seal] /s/ WM. F. THOMPSON, JR.,
Clerk, United States District Court, District of
Hawaii.

[Title of District Court and Cause.]

COMPLAINT UNDER SEC. 503 U. S. NATIONAL-
ALITY ACT OR 8 USCA SEC. 903

I.

This action arises under Sec. 503 U. S. Nationality Act or 8 USCA Sec. 903, as hereinafter more fully appears.

II.

At all times hereinafter mentioned the plaintiff was, and still is, a national of the United States of America. He was born in Narvacan, Ilocos Sur, Philippine Islands, on November 7, 1909. He first came to Honolulu, T. H., in 1929, and since then up to the present time he has been, and still is, a permanent resident of the Territory of Hawaii, and claims said Territory of Hawaii as his permanent residence.

III.

The defendant is the Secretary of State of the Government of the United States. As such, he is the head of said Department. Ruth B. Shiply is the assistant to the defendant, and as such she is the Chief of the Passport Division of the U. S. Department of State and whose duty is to issue U. S. passports to United States nationals who are desirous to work on the Island of Guam. [5]

IV.

In May, 1946, plaintiff applied for employment with the U. S. Engineers at Honolulu for employment as a truck driver on the Island of Guam, a

territory of the United States. He was employed as such and upon his completion of his contract he returned to Honolulu on August 11, 1947.

For some time last past he has been employed as a pantryman in the Officers Club at Camp Catlin in said Honolulu.

V.

Plaintiff intends and desires to return to Guam for employment in the near future. Pursuant to said intent, on February 26, 1949, plaintiff applied for a U. S. Passport as a national of the United States with Eleanor Prendergast, a subordinate of the defendant, Dean Acheson. She told plaintiff that she would refer his application for a U. S. Passport to defendant, Dean Acheson, as she claimed that plaintiff was an alien by virtue of the Philippine Independence Act of July 4, 1946.

VI.

On March 8, 1949, plaintiff, through his counsel, wrote a letter, a copy of which marked "Exhibit A" is hereto attached and made part hereof, to said Ruth B. Shipley, applying for the issuance of a U. S. passport to Guam. In said letter, plaintiff enclosed two applications for a U. S. Passport in the usual form to said Ruth B. Shipley. On March 29, 1949, plaintiff again, through his counsel, sent another letter, a copy of which marked "Exhibit B," hereto attached and made a part hereof, to said Ruth B. Shipley, requesting an answer to his application for U. S. Passport; and on April 8,

1949, plaintiff received a speedletter, a copy of which marked "Exhibit C," hereto attached and made part hereof, replying to plaintiff's letters that [6] plaintiff was not entitled to a U. S. passport.

VII.

Heretofore, plaintiff was informed by the U. S. Army at Honolulu that he could not enter the Island of Guam without a U. S. Passport and further that they could not employ plaintiff in the Government service without proof that he was a U. S. national or citizen.

VIII.

Plaintiff claims that he is a national of the United States and that the Philippine Independence Act of July 4, 1946, does not divest his U. S. nationality because at the time of the passage of said Act, he was a permanent resident of the Territory of Hawaii and for the further reason that he had not, by any affirmative act, lost his nationality by expatriation. That the refusal on the part of defendant to issue plaintiff a U. S. Passport as a United States national, by reason of the Philippine Independence Act of July 4, 1946, allegedly divesting Filipinos, residing in Hawaii of their United States nationality, is contrary to the 1st Amendment, 5th Amendment, 8th Amendment, and Section 8 of Article 1 of the Constitution of the United States.

IX.

By reason of the failure of said Ruth B. Ship-

ley, a subordinate of defendant, Dean Acheson, to promptly issue a U. S. Passport to the plaintiff so that he could comply with U. S. Army regulations requiring proof of U. S. nationality or citizenship, or so that he could enter Guam, plaintiff is denied the right and/or privilege of a U. S. national, as provided in 8 USCA Sec. 903.

Wherefore, plaintiff prays for a judgment and decree, adjudging that he is a national of the United States, and as such entitled to the rights and/or privileges of a national [7] of the United States, including a U. S. Passport in order to seek employment with the U. S. Army on the Island of Guam, or in order to enter Guam.

Dated: Honolulu, T. H., April 8, 1949.

/s/ ARCADIO CABEBE. [8]

“EXHIBIT A”

Wai Yuen Char

Attorney-at-Law

219 Bishop First Nat'l Bank Br. Bldg.

March 8, 1949

Miss Ruth Shipley

Passport Division

Department of State

Washington, D. C.

In Re: Application of Arcadio Cabebe for
U. S. Passport

Dear Miss Shipley:

I am instructed by my client, Mr. Arcadio, to write to you as follows:

My client is a Filipino by birth, born November 7, 1909, at Narvocon, Philippine Islands; he arrived at Honolulu in 1929; he has established his permanent domicile in Honolulu up to the present time; he is desirous of making a trip to the Island of Guam for the purpose of seeking employment.

Upon application for U. S. passport as a U. S. national, it has been the ruling with Miss Eleanor Prendergast, the local representative of State Department, secretary to the Territorial Governor's office, that since the Independence Act of July 4, 1946, all Filipinos in the Territory are considered as aliens and therefore, she has been denying U. S. passports to local Filipino applicants.

It is my contentions: (1) that the Philippine Independence Act does not divest U. S. nationality of Filipinos who have made their permanent residence in the Territory of Hawaii; (2) that the methods of expatriation of a U. S. national or citizens are described in the Nationality Code under "loss of nationality"; (3) that my client has not taken any affirmative act to cause the loss of his U. S. nationality; (4) that if the Independence Act does divest the local Filipinos of U. S. nationality, it would run counter to his vested right under the due process of law under the Fifth Amendment; (5) that if said act divests the Filipinos of U. S. nationality, it is unconstitutional on the ground that Congress cannot pass any ex post facto law contrary to Article 1, section 9, under the United States Constitution.

From the foregoing reasons, I would like to have a prompt answer to the enclosed application of passport for the reason that he has been out of employment for some time and he is in desperate need of work and money to support himself.

Hoping you will favor me with an immediate reply, I remain,

Very truly yours,

W. Y. CHAR. [9]

“EXHIBIT B”

Wai Yuen Char

Attorney-at-Law

219 Bishop First Nat'l Bank Br. Bldg.

March 29, 1949

Miss Ruth Shipley
Passport Division
Department of State
Washington, D. C.

Re: Application of Arcadio Cabebe for U. S.
Passport.

Dear Miss Shipley:

On March 8, 1949, I wrote you regarding the above-captioned matter, and to this date I have not received a letter acknowledging receipt of same.

Inasmuch as my client is in urgent need of employment and cannot obtain same in Honolulu, he is in desperate need of a U. S. passport to go to Guam as a U. S. national. Should I fail to hear from you by April 11, 1949, I'll take it that you do not wish to grant my client a U. S. passport. I

shall then file suit in the U. S. court to have his status determined under Sec. 903 of 8 U.S.C.A.

Very truly yours,
W. Y. CHAR. [10]

“EXHIBIT C”

Passport Division
Speedletter

In reply refer to
M 130 Cabebe, Arcadio

Date: April 5, 1949

Wai Yuen Char
206 Bishop National Bank Branch Bldg.
Smith and King Sts.,
Honolulu, T. H.

It is regretted that under the Department's interpretation of the Act of July 4, 1946, Mr. Arcadio Cabebe is not a citizen of the United States.

If he wishes to have a passport he should consult a Philippine Consular Officer.

R. B. SHIPLEY,
Chief, Passport Division.

DSL-338

7-9-47

[Endorsed]: Filed April 9, 1949. [11]

[Title of District Court and Cause.]

SUMMONS

To the Above-Named Defendant:

You are hereby summoned and required to serve upon W. Y. Char, plaintiff's attorney, whose address is 219 Bishop National Bank Branch Building, Honolulu, T. H., an answer to the complaint which is herewith served upon you, within 60 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

[Seal] /s/ WM. F. THOMPSON, JR.,
Clerk of Court.

Dated: April 9th, 1949. [12]

[Title of District Court and Cause.]

RETURN ON SERVICE OF WRIT

United States of America,
District of—ss.

I hereby certify and return that I served the annexed Summons on the therein-named Dean Acheson by mailing to him a certified copy of the Summons and Complaint attached thereto by registered mail, return receipt requested and by handing to and leaving with Ray J. O'Brien, United States Attorney, District of Hawaii, a certified copy of the Summons and Complaint attached thereto, per-

sonally at Honolulu, T. H., in said District on the 11th day of April, A.D. 1949.

OTTO F. HEINE,

U. S. Marshal.

By /s/ GEORGE E. BRUNO,

Deputy.

(Return Receipt attached.) [13]

[Title of District Court and Cause.]

ANSWER

Comes now Dean Acheson, Secretary of State of the United States of America, defendant above named, by his attorney, Ray J. O'Brien, United States Attorney for the District of Hawaii, and denies each and every allegation of the complaint.

Dated: Honolulu, T. H., this 1st day of June, 1949.

DEAN ACHESON,

Secretary of State of the
United States of America.

Defendant.

RAY J. O'BRIEN,

United States Attorney,
District of Hawaii.

Attorney for Defendant.

By /s/ KENNETH E. YOUNG,

Assistant United States
Attorney, District of
Hawaii.

[Endorsed]: Filed June 1, 1949. [14]

In the United States District Court for the
District of Hawaii

Civil No. 908

ARCADIO CABEBE,

Plaintiff,

vs.

DEAN ACHESON, Secretary of State of the United
States of America,

Defendant.

J. Frank McLaughlin, Judge.

Y. Fukushima, Bishop National Bank Br. Bldg.,
Honolulu, T. H.; Sau Ung Chan, 88 North King
St., Honolulu, T. H.; W. Y. Char, 219 Bishop Na-
tional Bank Br. Bldg., Honolulu, T. H., Attorneys
for Petitioner.

Ray J. O'Brien, United States Attorney, District
of Hawaii; Kenneth E. Young, Assistant United
States Attorney, District of Hawaii; Howard K.
Hoddick, Assistant United States Attorney, District
of Hawaii, Attorneys for Defendant. [15]

[Title of District Court and Cause.]

MEMORANDUM DECISION

By this suit brought under 8 U.S.C. §903 for a
declaratory judgment, the petitioner seeks to have
the court declare him to be today a "national of the
United States" and thus enable him to procure a

passport to go to Guam, which the State Department has denied him on the ground he is not a United States citizen, though such was not the basis of his application.

During the course of argument it developed that petitioner also had pending in this court a petition for naturalization in which he alleged under oath that he was a citizen of the Republic of the Philippines. To remove the inconsistency and because it appeared that his naturalization petition would not be successful in the face of a moral turpitude charge, the petitioner during an interruption in this case withdrew his naturalization petition. [16]

The facts are not disputed. Reduced to their essence they are sufficiently reflected in this statement of the issue: Is not one who became by birth in 1910 in the Philippine Islands a national of the United States and who has at all times since 1930 resided permanently in Hawaii, still a national of the United States despite the fact that the Republic of the Philippines came into existence as an independent nation in 1946?

Petitioner's argument, based to a degree upon emotion and hardship, is:

1. Congress had no power to cause Filipino nationals of the United States residing in the United States to lose their status as such. Granting independence to the Philippine Islands and changing the status of Filipinos in the Philippine Islands may have been all right and within the power of Congress, but Congress had no power to

alter the status of Filipino nationals permanently resident in the United States against their wishes.

2. Petitioner's status as a national was and is a vested right which it was beyond the power of Congress to take from him by reducing him to the lowly status of an alien. Here reliance is had upon the First, Fifth, and Eighth Amendments and to §8 of Art. 1 of the Constitution by language which sounds in terms of lost freedom of speech (Petitioner argues he can no longer say, "I am an American.") and cruel and abusive punishment.

The contentions are ingenious and emotional but as indicated in the oral decision wholly without legal merit. [17]

Petitioner to be sure was a national of the United States. But whether he likes what his people asked to be allowed to do and did with the approval of the United States or not, he has not been able since the coming into being of the new nation, the Republic of the Philippines, to qualify under our laws as a national of the United States. Upon the date when the Republic of the Philippines became a free and independent nation the foundation for petitioner's claim to being a national of the United States vanished. On that date, too, by Article IV of the constitution of the new republic petitioner became a citizen thereof and to it owed allegiance. Prior thereto he had been a national of the United States only because the place where he was born belonged to the United States as a possession. When that fact no longer obtained—

whether he liked it or not—petitioner could no longer qualify under the conditions of §501 (b) of Title 8, which provides that

The term “national of the United States” means (1) a citizen of the United States, or (2) a person who, though not a citizen of the United States, owes permanent allegiance to the United States. It does not include an alien.

Section 604 avails not the petitioner for that pertains to how one becomes a national. Section 501 controls as to whether or not at any given time one still is a national. No longer does petitioner owe allegiance to the United States, and he is now an alien.

I entertain not the slightest doubt that petitioner is now and has been since July 4, 1946, an alien and that his prior status as a national gave him no vested right. His status as such was beyond his control in so [18] far as it was susceptible of being altered—as it was—by the actions of the Government of the United States and of the Republic of the Philippines.

The prayer is denied and the petition dismissed.
Dated at Honolulu, T. H., June 23, 1949.

/s/ J. FRANK McLAUGHLIN,
Judge.

[Endorsed]: Filed June 23, 1949. [19]

In the United States District Court for the
District of Hawaii

Civil No. 908

ARCADIO CABEBE,

Plaintiff,

vs.

DEAN ACHESON, Secretary of State of the
United States of America,

Defendant.

JUDGMENT

This matter, having come on duly to be heard on the 22nd day of June, 1949, the substantive and material facts having been stipulated to by counsel for the plaintiff and counsel for the defendant; and counsel for the plaintiff and counsel for the defendant having presented arguments;

It Is Hereby Ordered and Adjudged that the prayers contained in the complaint filed herein be and are hereby denied and that the complaint filed herein be and is hereby dismissed.

/s/ J. FRANK McLAUGHLIN,
Judge, United States District Court for the District
of Hawaii.

[Endorsed]: Filed June 23, 1949. [21]

[Title of District Court and Cause.]

MOTION FOR EXTENSION OF TIME
FOR APPEAL

Comes now Arcadio Cabebe, by his attorneys, W. Y. Char and Yasutaka Fukushima, and moves this Honorable Court to extend the time for appeal in the above-entitled matter to August 22, 1949, under Rule 73 (a) of the Federal Rules of Civil Procedure.

This Motion is based upon the Affidavit of W. Y. Char and the records herein.

Dated at Honolulu, T. H., this 26th day of July, A.D. 1949.

ARCADIO CABEBE,
Plaintiff.

By W. Y. CHAR &
YASUTAKA FUKUSHIMA.

By /s/ W. Y. CHAR,
His Attorneys.

[Endorsed]: Filed July 26, 1949. [23]

[Title of District Court and Cause.]

AFFIDAVIT OF W. Y. CHAR

Territory of Hawaii,
City and County of Honolulu—ss.

W. Y. Char, being first duly sworn, on oath, deposes and says:

That my name is W. Y. Char and that I am an

attorney at law licensed to practice law before this Honorable Court and all the courts of the Territory of Hawaii;

That I am one of the attorneys for the Plaintiff in the above-entitled cause;

That upon a hearing held on June 22, 1949, in the above-entitled matter before the Honorable J. Frank McLaughlin, an oral decision was entered on the same day to which an exception was duly noted and a notice of appeal given.

Thereafter, I waited for the entry of a Memorandum Decision and Judgment and not having heard and not being served with any notice of such entry under Rule 77 of the Federal Rules of Civil Procedure, I telephoned the secretary of the Honorable J. Frank McLaughlin on the afternoon of July 25, 1949, [24] and discovered for the first time that the Memorandum Decision and Judgment was entered on June 23, 1949, and the time for taking an appeal had already passed. I was of the impression that the service of a notice of entry of Judgment by the clerk of the District Court of the United States under Rule 77 was necessary but upon re-checking said rule I discovered it to be otherwise. The failure to check the judgment docket was inadvertent inasmuch as I relied on the service of a notice of entry of judgment.

I am making this affidavit in support of the Motion to Extend Time for Appeal.

Further affiant sayeth not.

/s/ W. Y. CHAR.

Subscribed and sworn to before me this 26th day of July, 1949.

[Seal /s/ CHARLES L. K. HUTCHISON,
Notary Public, 1st Judicial Circuit, Territory of
Hawaii.

My Commission expires: 1/19/52.

[Endorsed]: Filed July 26, 1949. [25]

[Title of District Court and Cause.]

ORDER

Upon reading the motion for extension of time for appeal and affidavit of W. Y. Char attached to the motion and good reason appearing;

It Is Hereby Ordered that the time for appeal in the above entitled matter is extended to August 22, 1949.

/s/ J. FRANK McLAUGHLIN,
Judge of the above entitled
Court.

[Endorsed]: Filed July 26, 1949. [27]

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice is hereby given that Arcadio Cabebe, plaintiff above named, hereby appeals to the Circuit Court of Appeals for the Ninth Circuit from the

final judgment entered in this case on the 23rd day of June, 1949.

Dated: Honolulu, T. H., this 28th day of July, 1949.

/s/ W. Y. CHAR,
W. Y. CHAR and
Y. FUKUSHIMA,
Attorneys for Arcadio Cabebe.

[Endorsed]: Filed July 28, 1949. [29]

[Title of District Court and Cause.]

BOND ON APPEAL

Know all men by these presents, that Arcadio Cabebe, as principal, and United States Fidelity and Guaranty Company, a corporation duly licensed to carry on business in the Territory of Hawaii, as surety, are held and firmly bound unto the defendant above named, hereinafter called the "Appellee," in the sum of Two Hundred Fifty Dollars (\$250.00) for the payment of which well and truly to be made, we bind ourselves and our successors and assigns, jointly and severally, and firmly by these presents.

The condition of this obligation is such that:

Whereas the above bounden principal has filed his Notice of Appeal from the United States District Court for the District of Hawaii to the United States Court of Appeals for the Ninth Circuit to reverse the final Judgment of this court made and

entered in the above-entitled cause on the 23rd day of June, 1949.

Now, Therefore, if the said principal shall prosecute his appeal with effect and answer all costs if he fails to sustain said appeal, then this obligation shall be void, otherwise it [31] remains in full force and effect.

Sealed with our seal, and dated this 3rd day of August, 1949.

/s/ ARCADIO CABEBE,
[Seal] UNITED STATES FIDELITY
& GUARANTY COMPANY,
By /s/ HERMAN LUIS,
Its Attorney in Fact.

Territory of Hawaii,
City and County of Honolulu—ss.

On this 3rd day of August, A.D. 1949, before me appeared Arcadio Cabebe, to me personally known, who being by me duly sworn, did say that he is the principal named in the foregoing Bond on Appeal and that he acknowledged said instrument as his free act and deed.

[Seal] /s/ FRANCIS H. NAKAMURA,
Notary Public, 1st Judicial Circuit, Territory of
Hawaii.

My Commission Expires Oct. 1, 1952.

Territory of Hawaii,
City and County of Honolulu—ss.

On this 3rd day of August, 1949, before me personally appeared Herman Luis, to me personally known, who being duly sworn did say that he is the

Attorney-in-Fact of the United States Fidelity and Guaranty Company, duly appointed under Power of Attorney dated the 8th day of April, 1931, which Power of Attorney is now in full force and effect, and that the seal affixed to said instrument is the corporate seal of said corporation, and that said instrument was signed and sealed on behalf of said corporation under the authority of its Board of Directors, and said Herman Luis acknowledged said instrument to be the free act and deed of said corporation.

[Seal] /s/ WILLIAM B. STEVEN,
Notary Public, 1st Judicial Circuit, Territory of
Hawaii.

My Commission Expires May 6, 1952.

The foregoing bond is hereby approved as to form, amount and sufficiency of surety.

/s/ J. FRANK McLAUGHLIN,
U. S. District Judge.

[Endorsed]: Filed Aug. 5, 1949. [32]

[Title of District Court and Cause.]

DESIGNATION OF RECORD ON APPEAL

To the Clerk of the United States District Court
for the District of Hawaii:

Please prepare and certify a transcript of the record in this case to be filed with the Clerk of the United States Court of Appeals for the Ninth Circuit, upon the appeal herein, and include in said transcript the following:

1. Complaint under Section 503 of U. S. Nationality Act.
2. Summons.
3. Answer of Defendant-Appellee.
4. Memorandum Decision.
5. Judgment.
6. Motion for Extension of Time for Appeal.
7. Affidavit of W. Y. Char.
8. Order granting Extension of Time.
9. Notice of Appeal.
10. This Designation of Record on Appeal.

Dated: Honolulu, T. H., this 2nd day of August, 1949.

W. Y. CHAR and
Y. FUKUSHIMA,
By /s/ W. Y. CHAR,
Attorneys for Plaintiff-
Appellant.

[Endorsed]: Filed Aug. 5, 1949. [34]

In the United States Court of Appeals
For the Ninth Circuit
Civil No. 908

ARCADIO CABEBE,

Plaintiff-Appellant,

vs.

DEAN ACHESON, Secretary of State of the
United States of America,
Defendant-Appellee.

DESIGNATION OF RECORD

Comes now Arcadio Cabebe, Plaintiff-Appellant

in the above-entitled cause, and hereby designates the following parts of the record as necessary in the consideration of the points on which he intends to rely on appeal and requests that the following be printed as provided by the rules:

1. Complaint of Plaintiff-Appellant, Summons, and Officer's Return on Service of Writ.
2. Answer of Defendant-Appellee.
3. Transcript.
4. Memorandum of a Decision filed June 23, 1949.
5. Judgment filed June 23, 1949.
6. Motion for Extension of Time for Appeal.
7. Affidavit of W. Y. Char.
8. Order granting Extension of Time.
9. Notice of Appeal.

ARCADIO CABEBE,
Plaintiff-Appellant.

W. Y. CHAR and
Y. FUKUSHIMA,

By /s/ W. Y. CHAR,
Attorneys for Plaintiff-
Appellant.

[Receipt of copy acknowledged.]

[Endorsed]: Filed Aug. 8, 1949. [36]

[Title of Court of Appeals and Cause.]

STATEMENT OF POINTS

Comes now Arcadio Cabebe, Plaintiff-Appellant in the above-entitled cause, and states that he in-

tends to rely on the following points in his appeal to this Honorable Court:

1. The Court erred in holding that the Plaintiff-Appellant lost his United States nationality and became an alien when Congress granted complete independence to the Philippine Islands on July 4, 1946, while he was a permanent resident of the Territory of Hawaii.

2. The Court erred in holding that Plaintiff-Appellant's status as a U. S. national was not a vested right, which was beyond the power of Congress to take away from him, by reducing him to the lowly status of an alien, contrary to the Fifth Amendment of the United States Constitution.

3. The Court erred in holding that Congress has the right to reduce his status from that of a United States national to that of an alien and thereby depriving the Plaintiff-Appellant the right of truthfully stating, "I am an American," contrary to the First Amendment of the United States Constitution.

4. The Court erred in holding that the Philippine Independence Act did reduce Plaintiff-Appellant from his U. S. [38] national status to that of an alien and such holding had no retroactive effect in Plaintiff-Appellant's status to that of an alien, contrary to the Eighth Amendment of the United States Constitution.

5. The Court erred in holding that by reducing his status from that of a U. S. national to that of an alien, it does not have the effect of banishment and exile and thereby inflict cruel and unusual punish-

ment upon him, contrary to Section 8, Article One of the Constitution.

W. Y. CHAR and
Y. FUKUSHIMA,
By /s/ W. Y. CHAR,
Attorney for Plaintiff-
Appellant.

[Receipt of copy acknowledged.]

[Endorsed]: Filed Aug. 8, 1949. [39]

In the United States District Court
for the District of Hawaii
Civil No. 908

ARCADIO CABEBE,

Plaintiff,

vs.

DEAN ACHESON, Secretary of State of the
United States of America,

Defendant.

CERTIFICATE OF CLERK

United States of America,
Territory of Hawaii—ss.

I, Wm. F. Thompson, Jr., Clerk of the United States District Court for the District of Hawaii, do hereby certify that the foregoing record on appeal in the above-entitled cause, consists of the following listed original pleadings of record in said cause:

Complaint under Sec. 503, U. S. Nationality Act or 8 USCA Sec. 903, Exhibit "A," "B," and "C."
Summons.

United States Marshal's Return to Summons and

Return Receipt.

Answer.

Memorandum Decision.

Judgment.

Motion for Extension of Time for Appeal and
Affidavit of W. Y. Char.

Order.

Notice of Appeal.

Bond on Appeal. [40]

Designation of Record on Appeal.

Designation of Record.

Statement of Points.

Transcript of Proceedings.

In Witness Whereof I have hereunto set my hand
and affixed the seal of said District Court, this 15th
day of August, A.D. 1949.

[Seal] /s/ WM. F. THOMPSON, JR.,
Clerk, United States District Court, District of
Hawaii. [41]

In the United States District Court for the
Territory of Hawaii
Civil No. 908

ARCADIO CABEBE,

Plaintiff,

vs.

DEAN ACHESON, Secretary of State of the
United States of America,

Defendant.

TRANSCRIPT OF PROCEEDINGS

In the above-entitled matter, held in the U.S.

District Court, Honolulu, T.H., on June 22, 1949,
at 9:00 o'clock, a.m.

Before: Hon. J. Frank McLaughlin, Judge.

Appearances:

W. Y. Char, Esq.

Y. Fukushima, Esq.

Sau Ung Chan,

appearing for Plaintiff;

Howard K. Hoddick, Esq.,

Assistant U.S. Attorney,

appearing for the Defendant.

The Clerk: Civil No. 908, Arcadio Cabebe,
Plaintiff, versus Dean Acheson, Secretary of State
of the United States of America, for hearing.

The Court: Very well; are the parties ready?

Mr. Char: Ready for the Petitioner, if your
Honor please.

Mr. Hoddick: Ready for the Defendant, your
Honor.

The Court: Very well.

Mr. Char: Mr. Fukushima is associated counsel
in this case.

The Court: Yes, but he is not the only one.

Mr. Char: If your Honor please, I understand
from Mr. Hoddick—I think he would probably
stipulate to the facts in this case.

Mr. Hoddick: May it please the Court, this
matter was called rather suddenly. I understand
or understood it involved an identical question of

law in the case which we have recently considered in the other division of the Court. And what I would like to have Mr. Char do is to give an outline of the facts to the Court. Mr. Kelleher here is familiar with the facts of the case. If there are any serious discrepancies, we can take them up afterwards.

The Court: I haven't seen the file. Just a moment until the file arrives. [2*]

Mr. Hoddick: May I have a moment?

The Court: Yes.

Mr. Char: At this time may I have an amendment?

The Court: Wait until the file comes. I haven't got the petition before me. Apparently the Clerk thought I had the file. (File handed to the Court.)

Mr. Char: The amendment is, that it is contrary to the first amendment, in paragraph VIII.

The Court: Deleting the fifth?

Mr. Char: No, including the fifth but adding just before the fifth the first amendment in there.

The Court: You want paragraph VIII, the last two lines, to read "is contrary to both the first and the fifth amendments?"

Mr. Char: First, fifth, and I have also the eighth, and another one.

The Court: And Section 8 of Article 1 of the Constitution?

Mr. Char: Right.

The Court: Any objection?

* Page numbering appearing at top of page of Reporter's original Transcript of Record.

Mr. Hoddick: No objection, your Honor.

The Court: Very well, the amendment may be allowed. To repeat, paragraph VIII of the petition has been amended so that the last two lines thereof read by inserting the phrase "first amendment" ahead of the phrase "fifth amendment," [3] that it "is contrary to the first amendment, the fifth amendment, the eighth amendment, and Section 8 of Article 1 of the Constitution of the United States."

Now, what does this matter involve, an actual hearing or is there a motion?

Mr. Char: I think it is an actual hearing.

Mr. Hoddick: That is my understanding of it, your Honor.

The Court: All right, Mr. Char, you may proceed.

Mr. Char: I understand that Counsel will stipulate that the Plaintiff was born in Narvacan, Ilocos Sur, Philippine Islands, on November 7, 1949; that he first came to Honolulu, T.H., in 1929; and since then up to the present time he has been, and still is, a permanent resident of the Territory of Hawaii, and claims said Territory of Hawaii as his permanent residence.

The Court: Well, let's take it paragraph by paragraph. Is there any dispute as to the facts alleged in paragraph 2?

Mr. Hoddick: As to paragraph 2, our record reveals that the Petitioner in this case stated he was born on October 10, 1910, in the same place specified in paragraph 2.

The Court: Well, is the date important?

Mr. Hoddick: It is not important. Also, he first came to Honolulu in March, 1930, rather than in 1929.

The Court: Those dates are reflected by the immigration records? [4]

Mr. Hoddick: That is correct.

The Court: Apparently your client is a little confused as to when he was born and when he came here. Do you wish to accept the immigration date?

Mr. Char: Yes, your Honor.

The Court: Well, that would make it—the first date would become what?

Mr. Hoddick: October 10, 1910.

The Court: October 10, 1910?

Mr. Hoddick: October 3 rather than the 10th.

The Court: Excuse me?

Mr. Hoddick: October 3rd rather than the 10th.

The Court: And first came to Honolulu when?

Mr. Hoddick: March, 1930.

The Court: Incidentally, it occurs to me that this confusion may arise from a different method; in some case that was pending here recently the allegation was that somebody came here in such and such a year, Chinese count. You don't expect me to count that, do you? Can't you figure out what year it was?

Mr. Char: I can't myself but I have to consult the book at the immigration station.

The Court: Well, don't go setting forth any facts and pleadings in this Court involving the Court in finding out what year is it going to go on the Chinese

calendar. You [5] figure it out before you file it. But that is parenthetical. We will have that up in a day or two, I guess. All right. The dates are different and changed by agreement, and as to paragraph 2, but they are not significant as to the problem before us. Paragraph 3?

Mr. Hoddick: No exception to the allegations contained therein.

The Court: Agreed as to all?

Mr. Hoddick: Yes, your Honor.

The Court: All right. Paragraph 4?

Mr. Hoddick: Apparently all those allegations are correct.

The Court: Five?

Mr. Hoddick: We will accept counsel's statement that these allegations are correct.

The Court: All right. Six?

Mr. Hoddick: We take the same position as to paragraph six.

The Court: Seven?

Mr. Hoddick: Accept the allegations of the petitioner.

The Court: Eight? Eight, as amended. Are there any facts alleged——

Mr. Hoddick: I think that all states conclusions of law.

The Court: You deny eight, then, which on the facts [6] previously agreed upon raises the question of law?

Mr. Hoddick: Yes, that is correct.

Mr. Char: You will admit that he did not affirmatively, that he did any act to expatriate himself?

He didn't take any action at all, any affirmative action.

Mr. Hoddick: Yes, I will.

The Court: All right.

Mr. Char: As to the other, it is just a question of law.

Mr. Hoddick: Yes. Nine we will also deny.

The Court: All right. I think I gather from this stipulation the essential facts to be as follows: This petition was brought by a man who has been denied a passport requested for the purpose of entering Guam, which passport he applied for on the basis of being, as of the date of his application, a national of the United States. And in this litigation, based on the facts indicating that he is lawfully here and was here a permanent resident of the United States at the time the Philippines acquired its independence, that being here in the United States he was not affected by the independent act by which the Philippines became an independent nation; that regardless of what Congress may have had the power to do with respect to nationals who lived in the Philippines and remained there when it became an independent nation, Congress did not have, he claims, the power to divest nationals of the United States living in the United States of their [7] national status or their status as nationals, rather. Isn't that it?

Mr. Char: That's right. I might point out, if your Honor please, that paragraph 2 says,

"At all times hereinafter mentioned the plain-

tiff was, and still is, a national of the United States of America.”

I think that should be denied. Otherwise it will become a moot question.

The Court: Yes. I will so agree also.

Mr. Hoddick: We have already filed a general denial in this matter as to all allegations.

The Court: In other words, you admit the facts but deny any conclusions of law. All right.

Mr. Char: I might state also at the outset, if your Honor please, that this memorandum that I have now is a part of the memorandum that was filed in the other case, in the Vioria case, and Judge Metzger has ruled in that case; he ruled, in fact, on both questions, that is, the question involved, but I think the other question is moot. That is the present question before the Court. It wasn't necessary in that case, in the Vioria case.

The Court: I read that decision this morning, it being the first opportunity I have had to see a copy of the decision. I am inclined to agree with you that the decision does not necessarily involve the question presented by this litigation, [8] although reference is made to it. But the decision is primarily based on another point, namely, that his residence was not interrupted by going to Guam to work for the Government, despite the wording of the statute in that regard which excludes Guam or Midway, whatever it is, from the definition of the United States as that term is used in the Nationality Act. I might also say that I am inclined to agree with Judge Metzger. So that, whereas Judge Metzger in

that Vilorio case has rendered a decision and did make passing reference to the point here involved, it is not necessary to the decision which he reached in that case, and to consider the question of why don't we in this litigation. All right. How does your argument go?

(Mr. Char presented his opening argument.)

(A short recess was taken at 9:55 a.m.)

After Recess

Mr. Char: If your Honor please, I have been instructed to withdraw the petition for naturalization.

The Court: Have you done so?

Mr. Char: I am asking that it be done now.

The Court: Have you anything that you want to say, Mr. Kelleher?

Mr. Kelleher: May it please the Court, on this petition for naturalization the petitioner is present in Court and through his counsel he has moved for the dismissal of the [9] petition. It is recommended that this petition be denied on the petitioner's motion.

The Court: Wait a minute. You ask me to deny it. He asks that it be withdrawn.

Mr. Char: Yes, your Honor.

Mr. Kelleher: Dismissed on the petitioner's motion.

Mr. Char: That is, without prejudice.

Mr. Kelleher: There is no prejudice involved. He can file a new petition at any time. But that would be the statutory ground on which this peti-

tion should be removed from the pending calendar. It should either be denied or granted or continued.

The Court: We have had it withdrawn before, have we?

The Clerk: They came in with an order of denial.

The Court: You want to clear your record of the thing?

Mr. Kelleher: That's correct. We recommend that it be denied on the petitioner's motion.

The Court: All right. Very well, this matter involving naturalization petition No. 9236, coming up for discussion and consideration in the midst of the hearing of argument in Civil 908, the Court alluding to the inconsistent positions taken by the individual involved in both cases, his attorney makes in his behalf a motion to dismiss the pending petition for naturalization filed by him, namely, No. 9236, and I will grant the motion and the record may show that upon the request [10] of the petitioner for naturalization in reference to petition No. 9236 the petition is denied without prejudice.

Mr. Char: I'd like to call Mr. Kelleher just to clarify some points.

The Court: All right.

Mr. Char: Mr. Kelleher, will you take the witness stand.

Mr. Hoddick: Mr. Char, I ask you what you are offering to adduce from Mr. Kelleher?

Mr. Char: On all these petitions for naturaliza-

tion, we will try to get some explanation in that he had been advised, under the service interpretation, that these applicants are aliens, and as aliens or nationals of the Republic of the Commonwealth of the Philippines.

Mr. Hoddick: How is that material to anything before the Court at this time?

Mr. Char: Well, because it will clarify the Court's mind that he did not affirmatively and knowingly put that statement in the application for naturalization that he was a national of the Philippines.

Mr. Hoddick: I don't believe, may it please the Court, that that question is in issue in Civil No. 908 which is presently pending before the Court.

The Court: Well, the Court is charged with the knowledge of its own records, and even though the naturalization petition has now been withdrawn without prejudice, it doesn't [11] know that there was a time when this man did swear under oath in a document on file in this Court that he was an alien, to wit, a citizen of the Republic of the Philippines.

Mr. Hoddick: I would suggest that is a conclusion of law on the part of the petitioner, and the issue of law before the Court is going to be decided on the basis of stipulated facts, so that I don't see that his swearing under oath to that, to the fact that he was an alien in his petition for naturalization comes into the question here in Civil No. 908. In other words, you have a clear state-

ment of facts and a clear issue of law which is presented to the Court.

The Court: Well, the fact is a legal conclusion, to be sure, but it is also a legal fact and what the man held himself out to be under oath may be of significance in relation to this matter. I will hear Mr. Kelleher.

JOHN J. KELLEHER

Naturalization Examiner, being duly sworn, testified as follows:

Direct Examination

By Mr. Char:

Q. What is your name, please?

A. John J. Kelleher.

Q. And what is your occupation?

A. Naturalization Examiner, U. S. Immigration and Naturalization Service.

Q. For how many years? [12]

A. Ten.

Q. Ten years? And what, naturalization exclusively for the past how many years?

A. Three, past three years.

Q. And you are familiar with the preparation of applications for naturalization?

A. I am.

Q. And you also assist great numbers, say, Filipino applicants for naturalization? A. I do.

Q. And that is, you help them fill out the forms, is that right?

A. I help them file their petitions, assist them

(Testimony of John J. Kelleher.)

to file their petitions, not to fill out their application forms.

Q. But with reference to Cabebe's application as to the printed words "present nationality"—

The Court: Appearing in?

Q. —appearing in the petition for naturalization for Cabebe, Arcadio Cabebe, "present nationality," "Republic of Philippines," is that right?

A. That's correct.

Q. Now, do you sometimes very frequently advise the applicants to put that in answer to that, what nationality, of the Philippine Republic?

Mr. Hoddick: I object to that on the grounds, your Honor, [13] that the question here is what this particular applicant was advised, and there has been no foundation laid to show that Mr. Kelleher advised this particular applicant brought out of the petition.

The Court: That's right. Your foundation isn't broad enough. It may be too broad.

Q. Well, I mean helping out and filling out these forms, did you ever advise applicants as to how to fill out that particular question?

Mr. Hoddick: I will object to that on the grounds that it isn't material.

Mr. Char: Well, I will lead that up. This is preliminary.

The Court: Well, ask him how that happened in this case, how it happened to be recorded. And I notice it is typewritten.

(Testimony of John J. Kelleher.)

Q. Do you know anything about this application, Mr. Kelleher?

A. Yes. I had a hand in processing it, and I conducted the preliminary examination and the preliminary hearing in this case.

Q. And as to that particular question, Philippine nationality, do you know anything about that?

A. Yes. This petitioner first submitted an application to file a petition in which he stated that his present [14] nationality was Filipino. When the accuracy of the statement came in his application, we checked at the preliminary examination. That statement of facts was given to a typist who typed the petition from the facts contained in the statement of facts. And, although the application shows "Filipino," it is shown on the petition as "Republic of the Philippines," which is probably the better term to describe his citizenship status rather than just the word "Filipino."

Q. But what is your understanding as to that terminology "Republic of Philippines"? Is that a conclusion on the part of the applicant?

A. In this case I am quite sure that it was. How he got it, I don't know. But all I can conclude is that he did feel that he was a citizen of the Republic of the Philippines because it appears on his application.

The Court: When you say "application," what do you mean, this formal document that has just been withdrawn, 9236, or some preliminary paper?

The Witness: Preliminary paper.

(Testimony of John J. Kelleher.)

The Court: Made out by whom, by him?

The Witness: Made out by him.

The Court: In his own handwriting?

The Witness: No, it is—this is a typewritten, made out on the typewriter, but it is signed by him, was signed by him before it was submitted to us. We don't have anything [15] to do with the preparation of these forms. It is an application form, the preliminary application form. They take it to friends or they take it to various agencies set up to aid and assist people in becoming citizens, and so on and so forth.

The Court: Your office has no contact in making out that form?

The Witness: None whatsoever.

The Court: You don't know when and where and under what circumstances this man made out that form?

The Witness: No, sir. There is a question on this form, "Did you yourself fill out this form? If not, give the name and address of the person who did." That is left blank.

Q. (By Mr. Char): That is, you didn't know who filled out that form?

A. I don't know from—

Q. Did you ever give instructions as to certain people or certain Filipino interpreters to put up the form, just put down as Republic of Philippines, because that is your understanding that they are aliens and therefore you would like to have it in that way?

(Testimony of John J. Kelleher.)

A. Well, I will say this, that when the Commonwealth of the Philippines first gained their independence and when the legislation was enacted permitting Filipinos to become [16] citizens, there was a person who came forward and indicated that they wanted to assist them in filling out these applications. And while I can't state positively that I did positively state to anyone that they should show "Republic of the Philippines," I might have. But if, as you say, on the question as to whether it was my understanding, it is my understanding that is the proper term and should be shown on the petition for naturalization, if they were born in the Philippines.

Q. If they put some other terms, wouldn't you request them to fill it the way it appears on that petition?

A. If they put some other term, I am quite sure that I would suggest that they show "Republic of the Philippines" and tell them to change it.

Q. But you could change it?

The Court: In other words, at this time, in view of the position which the Government takes, you would receive and process a petition for naturalization predicated on the basis of the person being a national of the United States, derived from citizenship in the Philippines?

The Witness: I didn't understand the first part of it.

The Court: In other words, today, in light of

(Testimony of John J. Kelleher.)

the position which the Government takes on this big issue that Mr. Char is raising, namely, that there are no longer Philippine nationals in the United States, you wouldn't receive and [17] process a petition that was filed claiming that the person was—of Filipino extraction such as this man, on the facts—that the person was a national of the United States, arrived from the Philippines and was on that basis and that basis alone seeking American citizenship under that provision of the law passed in 1940 allowing nationals of the United States to become citizens even though they weren't aliens?

The Witness: Well, if the application was submitted in which the applicant stated that he was a national of the United States, I would suggest to him, that is, today, I would suggest to him that that is incorrect, that he should file his petition as a citizen of the Republic of the Philippines. Now, as far as being a national of the United States, he could proceed towards citizenship in the same manner as an alien under Section 321. I can't think of any reason why he shouldn't, except that there might be an issue raised as to what the petition reflected as to his true nationality status. Now, it is kind of difficult to get into that and say just what might arise if he did show that, because after all he would be entitled to citizenship. It wouldn't be a matter that, well, we should make too much fuss about, I don't think, because he'd be either a national or an alien.

(Testimony of John J. Kelleher.)

Q. Now, Mr. Kelleher, you processed, shall I say, thousands of petitions for naturalization for Filipinos? A. Yes. [18]

Q. And is there anyone who ever claimed U. S. nationality in the petition for naturalization?

A. Well, occasionally one comes up where the information itself indicates that they do claim that U. S. nationals are second-class Americans, and it is the various and sundry terms they put in there to show that, although they are not full citizens of the United States, they are not aliens. But upon examination it is always revealed that they just didn't understand and they ask our advice, my advice, and I always tell them that it should show "Republic of the Philippines."

Q. But as to Filipinos petitioning for naturalization, there isn't any in your experience that they set it out as U. S. nationals?

A. In the petition itself?

Q. In the petition.

A. No, none that I know of.

Mr. Char: That's all.

The Court: Mr. Hoddick?

Mr. Hoddick: No questions.

The Court: You are excused.

(Witness excused.)

The Court: All right. Any further evidence on that score?

Mr. Char: No. [19]

The Court: All right. You can resume your

argument, then. I take it you have no evidence on this point, Mr. Hoddick?

Mr. Hoddick: No, your Honor.

The Court: All right. So here we are now with the situation clarified to some extent. At least the man is now on the basis of the record at least consistent with what he is saying here, namely, that he is a national still of the United States, and under his theory Congress had no right to deprive him of that status by giving the Philippine Islands their independence. Now, I have thrown you off stride by injecting this matter. It is now cleared up.

(Mr. Char resumed his argument.)

(The Court recessed at 12:10 p.m.)

Afternoon Session

(Mr. Hoddick presented his argument.)

(Mr. Char presented his closing argument.)

The Court: Well, I am going to give you an oral ruling on this point now, and I will supplement it later in a memorandum decision, for I gather that upon this point of law you are desirous of appealing as far as you can. It strikes me as if the basis of the contention made here by counsel for the petitioner upon the facts alleged in the petition, and agreed to as being operative facts, is a contention which is based more on emotion and sympathy than on logic of law. [20]

I am satisfied, as a matter of law, upon the facts here alleged that whether this particular plaintiff, and other similarly situated, liked what the United

States Government and the Government of the Philippine Islands did or not is beside the point. The fact is that in point of law, as a result of what has happened this plaintiff no longer qualifies under the laws of the United States as a national. True, he had been since his birth a national of the United States, which is a shadow-land status lying somewhere between the two extremes of citizenship and alienship, and his acquisition of that status as a national was derived from the fact that he was born in an area or, as you like to put it, upon a piece of property which was a possession of the United States. And being such, or rather, being so born, as a matter of law he owed in terms of nationality allegiance to the United States. But when, pursuant to the grace of Congress of the United States, in speaking for its people, the Congress acceded to the wishes of the people of the Philippine Islands and granted them independence as a free and sovereign nation, and that came to pass, at that time the foundation upon which this plaintiff had previously correctly maintained that he was a national of the United States disappeared. And by operation of law the country to which he then belonged and to whom he then and there after owed allegiance was the Republic of the Philippine Islands, and of which, under [21] Article 4 of its constitution, he became and is a citizen. And in his relationship, or rather from the standpoint now of the United States of America, even though he be lawfully in the United States for the purposes of

permanent residence, he is, being a citizen of the Philippines and owing exclusive allegiance now to its republic, he is, I say, in the eyes of the United States under its laws an alien and also an alien eligible for naturalization as a citizen of the United States if he meets the qualifications.

It is just practically unfortunate that with respect to the petition for naturalization which he had pending up until today there were obstacles placed there by his own doing, by his own conduct while in the United States, which made it unlikely that his petition would be successful. But I have indicated earlier that hard cases make poor law, and in the same light is the circumstance that he is very much desirous of going to Guam, I believe——

Mr. Char: Yes, your Honor.

The Court: ——and he can't go as a national of the United States or as a citizen of the United States. Whether or not he can go as a citizen of the Philippine Islands is another question upon which I am not authorized to pass. Whether or not he would want to go as such, if he could go, if he could go as such, is not my concern either. But quite clearly this man in his present circumstance as to alienship and citizenship, [22] passports, and so forth, has not been singled out and discriminated against by the United States Government or by his own government. In many respects the awkward position in which he finds himself currently as a practical matter is largely of his own doing. And

the sympathy, if any, which the facts might evoke do not change the law.

So to repeat, the foundations upon which he previously had a right under our law to claim to be a national of the United States having disappeared, disintegrated, by reason of the Philippine Islands becoming an independent nation under the name of the Republic of the Philippines, this particular plaintiff, I repeat, is no longer able to qualify under our law as a national of the United States.

The relief prayed for in this petition is denied and the petition is dismissed.

Mr. Char: May we note an exception, your Honor, and give a notice of appeal?

The Court: You may.

(The Court adjourned at 2:35 p.m.) [23]

I, Albert Grain, Official Court Reporter, U. S. District Court, Honolulu, T. H., do hereby certify that the foregoing is a true and correct transcript in Civil No. 908, Aracadio Cabebe versus Dean Acheson, proceedings held in U. S. District Court, Honolulu, T. H., on June 22, 1949, before the Hon. J. Frank McLaughlin, Judge.

/s/ ALBERT GRAIN.

Dated July 5, 1949.

[Endorsed]: Filed July 5, 1949.

[Endorsed]: No. 12333. United States Court of Appeals for the Ninth Circuit. Arcadio Cabebe, Appellant, vs. Dean Acheson, Secretary of State of the United States of America, Appellee. Transcript of Record. Appeal from the United States District Court for the Territory of Hawaii.

Filed: August 18, 1949.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for the Ninth Circuit.

In the United States Court of Appeals for the
Ninth Circuit

Civil No. 908

ARCADIO CABEBE,

Plaintiff-Appellant,

vs.

DEAN ACHESON, Secretary of State of the
United States of America,

Defendant-Appellee.

STATEMENT OF POINTS

Comes now Arcadio Cabebe, Plaintiff-Appellant in the above-entitled cause, and states that he intends to rely on the following points in his appeal to this Honorable Court:

1. The Court erred in holding that the Plaintiff-Appellant lost his United States nationality and became an alien when Congress granted complete independence to the Philippine Islands on July 4, 1946, while he was a permanent resident of the Territory of Hawaii.

2. The Court erred in holding that Plaintiff-Appellant's status as a U. S. national was not a vested right, which was beyond the power of Congress to take away from him, by reducing him to the lowly status of an alien, contrary to the Fifth Amendment of the United States Constitution.

3. The Court erred in holding that Congress has the right to reduce his status from that of a United States national to that of an alien and thereby depriving the Plaintiff-Appellant the right of truthfully stating, "I am an American," contrary to the First Amendment of the United States Constitution.

4. The Court erred in holding that the Philippine Independence Act did reduce Plaintiff-Appellant from his U. S. national status to that of an alien and such holding had no retroactive effect in Plaintiff-Appellant's status to that of an alien, contrary to the Eighth Amendment of the United States Constitution.

5. The Court erred in holding that by reducing his status from that of a U. S. national to that of an alien, it does not have the effect of banishment and exile and thereby inflict cruel and unusual

punishment upon him, contrary to Section 8, Article One of the Constitution.

W. Y. CHAR and
Y. FUKUSHIMA,
By /s/ YASUTAKA FUKUSHIMA,
Attorney for Plaintiff-
Appellant.

Receipt of copy acknowledged.

[Endorsed]: Filed Sept. 26, 1949.

[Title of Court of Appeals and Cause.]

DESIGNATION OF RECORD

Comes now Arcadio Cabebe, Plaintiff-Appellant in the above-entitled cause, and hereby designates the following parts of the record as necessary in the consideration of the points on which he intends to rely on appeal and requests that the following be printed as provided by the rules:

1. Complaint of Plaintiff-Appellant, Summons, and Officer's Return on Service of Writ.
2. Answer of Defendant-Appellee.
3. Transcript.
4. Memorandum of a Decision filed June 23, 1949.
5. Judgment filed June 23, 1949.
6. Motion for Extension of Time for Appeal.
7. Affidavit of W. Y. Char.
8. Order granting Extension of Time.

9. Notice of Appeal.

10. Clerk's Certificate.

ARCADIO CABEBE,
Plaintiff-Appellant.

W. Y. CHAR and

Y. FUKUSHIMA,

By /s/ YASUTAKA FUKUSHIMA,

Attorneys for Plaintiff-
Appellant.

Receipt of copy acknowledged.

[Endorsed]: Filed Sept. 26, 1949.

